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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,783	08/25/2003	LeRoy Thomas Warren JR.	07890009AA	1103

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EXAMINER

PIERCE, WILLIAM M

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,783

Applicant(s)

WARREN ET AL.

Examiner

William M Pierce

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION***Claim Rejections - 35 USC § 112***

Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, because the best mode contemplated by the inventor has not been disclosed. Evidence of concealment of the best mode is based upon the specification where applicant states that the materials used for the rail covers and thimbles is of a "proprietary method". On pg. 7, ln. 9 of applicant's specification, it refers to the cover made by a "specially formulated material" and the curved portion by just a "rubber material". On pg. 9, ln. 3 it states "in the embodiment, the lower rail covers 410 are comprised of a specially formulated urethane material manufactured by a proprietary method." It fails to disclose the material best suitable for the invention such that one skilled in the art can make and or use this invention.

Claims 1-22 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In line with the grounds for rejection set forth above, non-disclosures of materials does not allow one skilled in the art to make and use the claimed invention.

Claims 1-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims lack structural relationships between the elements. For example in claim the relationship of the belt, rails, rail covers and thimbles is not recited. In claim 3, no relationship between the bracket and the remaining elements is recited. In claim 5, "allow than" is a typo. Claims 7 and 18 are indefinite since single piece or multi-piece construction covers everything under the sun and is not further limiting of the previously recited claim elements. In claim 9, slip resistant is indefinite since it is a relative term with no given means for comparison. Claims 10-12 are indefinite and fail to further limit the structure of the previously recited elements. Claim 17 is misdescriptive in that the rail covers are not disclosed as having an "inner core".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lanzetta 6,368,228.

As to claim 1, 6, 7, 8-16, 18 and 19, '228 shows a belt 11A, rail covers 18 and tapered thimbles 17. He further shows that using a "frictional surface covering, such as rubber tubing, which aids in the elevation of the balls" (col., 1, ln. 20) is desirable. As to claim 2, the use of neoprene in belts such as that in '228 is considered well known and inherent. As to claims 4 and 4, 228 shows upper and lower track rail covers 17 and 19 respectively. As to claim 17 the bars of 16 of '228 are considered to be the inner core and the covers 18 are of a "softer" rubber urethane material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over '228 in view of matters old and well known to the art and design of machine elements as shown by Flototto 3,690,743.

As to claims 3, 20 and 21, '228 shows the tensioning bracket in fig 1 but does not discuss it in any detail. Note that this bracket is shown by element 80 in Ernst 3,297,322 as being a part familiar to one of ordinary skill in the art. The use of slots instead of holes in machine elements are well known when adjustment is necessary. To have change the holes in the bracket o'228 to slots would have been obvious to one of ordinary skill in the art in order to make the mounting of the bracket easier to adjust and align. Flototto is one teaching of the expedient of replacing slots for holes to allow for a "stepless adjustment" (col. 7, ln. 50). As to claim 22 the thimbles of '228 are considered adjustable

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huck and Ernst show ball lifting devices.

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Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.



WILLIAM PIERCE
PRIMARY EXAMINER